**THE HON'BLE MR JUSTICE V.V.S.RAO**

WRIT PETITION No.20035 of 1997

Dated: 12-07-2006

Between:

Guntupalli Sambaiah and nine others.

**..... PETITIONERS**

AND

The Commissioner for Cooperation &
Registrar of Cooperative Societies, Hyderabad, and two others.

**.....RESPONDENTS**

**THE HON'BLE SRI JUSTICE V.V.S. RAO**

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ORDER:

The ten petitioners filed the instant writ petition seeking a writ of Mandamus directing the respondents 1 and 2, namely, the Commissioner for Cooperation and Registrar of Cooperative Societies, and the General Manager, Guntur District Cooperative Central Bank Limited (GDCCB) not to demand them to pay the amounts received towards arrears of salary preceding the period 01-01-1983 from the second respondent till the decision of the House Committee of the Andhra Pradesh Legislative Assembly is taken.

The case of the petitioners is that the second respondent retrenched the petitioners and others in 1970 due to financial problems. However, during the period from 1971 to 1976, in a phased manner, it allowed the petitioners to join duty and their pay scales were fixed with effect from 01-01-1983. However, the petitioners requested to give them the benefit of fixation of pay scales on retrospective date when they were reinstated after a brief period of retrenchment. Allegations were made against the Managing Committee of GDCCB, as a result of which an enquiry was conducted under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (the Act, for brevity), pursuant to which it was decided to recover the arrears paid to the petitioners for the period during which they were not in the employment of GDCCB. The whole issue was raised in the Andhra Pradesh Legislative Assembly and till the House Committee submits a report, the respondents are prevented from recovering the amounts from the petitioners.

The second respondent filed a detailed counter affidavit, which reveals the following. In 1970, eighty employees, including the petitioners, were retrenched in view of unhealthy financial position of GDCCB. These retrenched employees were paid provident fund, gratuity, leave salary, security deposit etc., following the relationship of employer and employee. However, subsequently on a representation made by them, they were given appointments as and when vacancies arose as per their seniority, in a phased manner, during the period from 1971 to 1975. All of them raised an industrial dispute, being I.D.No.8 of 1975, claiming continuity of service and by award dated 31-03-1980, the claim of the employees was rejected by the Additional Industrial Tribunal. The writ petition, being W.P.No.6601 of 1980, filed against said award was withdrawn on 13-10-1982. Subsequently negotiations were held and all of them executed an undertaking on Rs.10/- stamp paper not to claim any seniority, back wages or any other monetary benefits. Accordingly the

Managing Committee passed a resolution on 20-12-1982 refixing their basic pay at the stage where they were retrenched with effect from 01-01-1983. Since 01-04-1987, the Primary Agricultural Development Banks were abolished and all its employees were merged with District Co-operative Central Banks. Again the petitioners raised the question of continuity of service by making representations. The Registrar of Co-operative Societies rejected their claim on 12-02-1989, aggrieved by which W.P.No.6965 of 1985 was filed. While said writ petition was pending, the petitioners claimed and received backwages for the period during which they suffered retrenchment, which is contrary to the order of rejection dated 12-02-1989 issued by the Registrar. An enquiry was conducted into this under Section 51 of the Act whereupon it was decided to initiate surcharge proceedings against all the petitioners for recovery of the amount received by them, after obtaining necessary orders from the Collector.

Learned counsel for the petitioners submits that the action of the second respondent in recovering the arrears of salary is illegal. According to the counsel, while the whole issue is referred to the House Committee of the Andhra Pradesh Legislative Assembly, pending report from the House Committee, respondents ought not to have recovered the amount. He, however, does not dispute or deny the factum of petitioners executing undertaking not to claim continuity of service and arrears for the retrenched period and that no reply affidavit is filed denying the counter averments.

**Per contra,** learned standing counsel for GDCCB has placed before this Court settlement of arrears paid and the amount recovered, which would show that in respect of all the petitioners, except petitioner No.8 the entire amount of arrears along with interest was recovered already. In case of petitioner No.9, the amount was recovered under a mistake though no arrears were paid to her. Learned standing counsel fairly submits that GDCCB will refund the amount to the petitioner No.9.

There is no denial that during the period of retrenchment till they were taken back in a phased manner, the petitioners did not work. When the petitioners did not work in their respective posts, it is needless to point out that they are not entitled for wages for said period. The petitioners made representations for continuity of service, which was rejected. The same was argued in the writ petition before this Court and while the same was pending the arrears were drawn by the petitioners, presumably with the connivance of the decision making body of GDCCB. This was certainly illegal. When the petitioners did not work and they were retrenched after paying all the retrenchment benefits, this court fails to understand as to how they are entitled for any arrears for the period during which they were not in their posts. In that view of the matter, this Court does not find any infirmity in the action of the second

respondent in recovering arrears of salary paid to the petitioners. However, a sum of Rs.4699/- has to be repaid to the petitioner No.9 by the second respondent. This may be done within a period of four weeks from the date of receipt of a copy of this order.

The writ petition, with the above observations, is dismissed. No costs.

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**V.V.S.RAO, J**

12th July, 2006

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